IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE PIUS C.KURIAKOSE

WEDNESDAY, THE 4TH JULY 2007 / 13TH ASHADHA 1929

WP(C).No. 5026 of 2005(W)

OS.40/1992 of MUN-MAGI COURT, SASTHAMCOTTA

PETITIONERS:

1. **KESAVA PILLAI KUTTAN PILLAI, KALIKUTTIAYYATHU VEETTIL,VENGAMURI, MYNAGAPPALLY VILLAGE, KOLLAM DISTRICT.**

2. **CHELLAPPAN PILLAI CHANDRAN PILLAI, KALIKUTTIAYYATHU VEETTIL, VENGAMURI, MYNAGAPPALLY VILLAGE, KOLLAM DISTRICT.**

3. **KUNJUKRISHNA PILLAI, HAREEBHAVANAM VEETTIL (FROM KALIKUTTIAYYATHU VEETTIL, VENGAMURI, MYNAGAPPALLY VILLAGE, KOLLAM DISTRICT).**

4. **THANKAMMA AMMA, VISHNUBHAVANAM VEETTIL (FROM KALIKUTTIAYYATHU VEETTIL, VENGAMURI, MYNAGAPPALLY VILLAGE, KOLLAM DISTRICT).**

BY ADV. SRI.B.MOHANLAL
SMT.MEREENA JOSEPH

RESPONDENT:

P.GOPALAKRISHNA PILLAI, KALIKUTTIAYYATHU THEKKETHIL ALSO KNOWN AS CHANDRABHAVANAM VEEDU, VENGAMURI, MYNAGAPPALLY VILLAGE, KOLLAM DISTRICT.

BY ADV. SRI.T.SAJI
SRI.A.SHANAVAS

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 04/07/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

WPC.NO.5026/2005 W

APPENDIX

PETITIONER'S EXHIBITS:

EXT.P1: **COPY OF JUDGMENT IN O.S.NO.40/92 DTD. 30/10/1995 OF THE MUNSIFF'S COURT, SASTHAMCOTTA.**

EXT.P1(A): **COPY OF THE DECREE IN O.S.NO.40/92 DTD. 30/10/1995 OF MUNSIFF'S COURT, SASTHAMCOTTA.**

EXT.P2: **COPY OF E,P.NO.10/98 FILED BEFORE MUNSIFF'S COURT, SASTHAMCOTTA ON 5/02/1998.**

EXT.P3: **COPY OF COMMISSION REPORT SUBMITTED BY COMMISSIONER ADVOCATE SRI. T.KALESAN DTD. 20/08/1992.**

EXT.P4: **COPY OF JUDGMENT DTD. 28/07/1999 IN E.P.NO.10/98 IN O.S.NO. 40/92.**

EXT.P5: **COPY OF THE JUDGMENT DTD. 5/10/2001 IN CRP.NO.2159/99.**

EXT.P6: **COPY OF E.P.NO.30/2002 IN O.S.NO.40/92 FILED BEFORE THE MUNSIFF'S COURT, SASTHAMCOTTA ON 18/03/2002.**

EXT.P7: **COPY OF OBJECTION IN E.P.NO.30/02 FILED BEFORE THE MUNSIFF' S COURT, SASTHAMCOTTA.**

EXT.P8: **COPY OF INTERIM ORDER DTD. 8/10/2003 IN WP(C) NO. 31468/2003.**

EXT.P9: **COPY OF JUDGMENT DTD. 20/02/2004 IN CRP.NO.2168/2003.**

EXT.P10: **COPY OF E.A.NO.85/2004 IN O.S.NO.40/92 IN E.P.NO.30/92 FILED BY THE PETITIONERS ON 18/12/2004.**

EXT.P11: **COPY OF ORDFER DTD. 21/12/2004 IN E.A.NO.85/2004.**

EXT.P12: **COPY OF E.A.NO.83/2004 IN E.P.NO.30/2002 IN O.S.NO.40/92 FILED BY THE PETITIONERS ON 20/12/2004.**

EXT.P13: **COPY OF ORDER DTD. 21/12/2004 IN E.A.NO.83/2004.**

/TRUE COPY/

KSS

PIUS C. KURIAKOSE, J.

W.P.(C) No. 5026 OF 2005

Dated this the 4th day of July, 2007

JUDGMENT

The petitioner is the judgment debtor in OS No.40 of 1992, wherein a decree of declaration of right of way by prescriptive easement and consequential injunction is passed against the petitioner. In execution of the decree on the allegation that the decree has been violated by the petitioner, the respondent decree holder filed Execution Petition before the execution court. The execution court passed a non-speaking order and allowed execution, posting the case for delivery report by the amin. On 20.02.2004, that order was set aside by this court as per Ext.P9 judgment, noticing that the order of the execution court is not a speaking order and that the objections filed by the petitioners have not been considered. This court specifically directed that the issue be re-considered by the execution court after affording opportunity to both sides and after considering the evidence adduced by the parties. Pursuant to that the learned Munsiff passed order on 2nd November 2004 noting the presence of the decree holder and deputing the officer of the court for executing the decree. Since the order of 2nd November, 2004 was equally a non-speaking order, the petitioner filed Ext.P10 application for review of the said order. The review petition was

dismissed by the learned Munsiff on the ground of delay by passing Ext.P11 order. May be the application for review was not filed within the prescribed time and learned execution court would have thought that it had no power to condone the delay in terms of Section 5 of the Indian Limitation Act. But at the same time I notice that the order sought to be reviewed was the order of 02.11.04 which was a totally non-speaking order. In view of Ext.P9 judgment of this court the execution court could have suo motu reviewed that order even without any application. The order dt.02.11.04 is liable to be set aside under the supervisory jurisdiction under Article 227 since the same is violative of the directions in Ext.P9 and I do so. Another order which is challenged in this case is Ext.P13 order. This order is passed on an application filed for amendment of the decree. I notice that the amendment application was not maintainable before the execution court.

Petitioners are allowed to file an application for amendment in terms of Ext.P12 before the trial court and if such an application is filed before the court below within one month from today, the trial court will invite objections from the plaintiff and hear both sides and dispose of the application within another one month of receiving that application without being influenced by Ext.P3.

PIUS C. KURIAKOSE, JUDGE

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